INFORMATION BULLETIN

2011-5

December 21, 2011

Extension of the Obligation to Provide an Information Slip for Childcare Expenses and Other Fiscal Measures Pertaining to Individuals

This information bulletin makes public the broadening to certain individuals of the obligation to provide an information slip relating to childcare expenses.

In addition, it details the rules to be followed to determine the portion of the remuneration of individuals responsible for family-type resources or certain intermediate resources that must be included in the calculation of insurable earnings for the purposes of the Québec Parental Insurance Plan and the Québec Pension Plan.

This bulletin also makes public the application details of a new tax credit designed to mitigate double provincial taxation to which the income from an office or employment of an individual not resident in Canada may be subject.

Lastly, it describes various changes that will be made to the personal tax system, most of which stem from the integration of various federal measures in Québec's tax legislation and regulations.

For information concerning the matters dealt with in this information bulletin, contact the Secteur du droit fiscal et de la fiscalité at 418 691 2236.

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Finances Québec

Extension of the Obligation to Provide an Information Slip for Childcare Expenses and Other Fiscal Measures Pertaining to Individuals

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1. EXTENSION OF THE DEADLINE FOR SUBMITTING AN APPLICATION FOR ADVANCE PAYMENTS OF THE TAX CREDIT FOR CHILDCARE EXPENSES OR THE WORK PREMIUM

As a general rule, families who pay childcare expenses may claim a refundable tax credit compensating them for part of the expenses, excluding those paid for a child who is in a reduced-contribution space.[1]

The main purpose of the tax credit is to recognize costs borne by parents who require childcare services so that they can go to work, pursue studies or seek employment.

Moreover, to support and value work effort and encourage people to give up last-resort financial assistance to enter the labour market, the tax system grants a work premium, which is paid as a refundable tax credit, to low- and middle-income households. This premium is adjusted depending on whether or not the household exhibits severely limited capacity for employment.

To obtain the tax credit for childcare expenses or the work premium for a given year, an individual must apply for it in his tax return filed for the year. However, the Minister of Revenue may, provided certain conditions are met, make advance payments of the tax credit for childcare expenses or part of the work premium that a household considers it is entitled to for a year, provided an application to that effect is submitted to him no later than September 1 of the year.

Where the Minister of Revenue receives the application from an individual for a given year no later than December 1 of the preceding year, the amount of the advance on account of the tax credit for childcare expenses or the work premium is payable in 12 equal advance instalments made no later than the 15th day of each month of the year. However, if the application is received after December 1 of the preceding year and no later than September 1 of the year, the amount of the advance is payable in equal advance instalments made no later than the 15th day of each of the months of the year that, generally, come after the second month following the one during which the application is received.

To better support families and low-income workers, the deadline for submitting an application for advance payment for a given year after 2011 on account of the tax credit for childcare expenses or the work premium will be October 15 of the year rather than September 1.

1 Where a child occupies such a space, it only costs a family $7 per day to provide the child with educational childcare services or childcare services in a school.

2. BROADENING TO CERTAIN INDIVIDUALS OF THE OBLIGATION TO PROVIDE AN INFORMATION SLIP RELATING TO CHILDCARE EXPENSES

Child-care expenses paid to enable an individual or his spouse to work, pursue studies or actively seek employment can give rise to the refundable tax credit for childcare expenses. This tax credit may also be granted for childcare expenses in any period during which an individual or his spouse receives benefits under the Québec Parental Insurance Plan or an equivalent plan.

The refundable tax credit for childcare expenses to which an individual is entitled for a year is equal to the product of the multiplication of the amount of his eligible childcare expenses for the year by the applicable rate depending on his family income.

The table of applicable rates for the purposes of the calculation of the tax credit is divided to reduce the gap between the net cost of childcare borne by middle class families that do not benefit from the government program for reduced-contribution spaces and that borne by families that do benefit from the program.

In general, all the expenses incurred by a household for childcare services are, subject to certain exclusions, considered eligible childcare expenses,[2] up to a limit set on the basis in particular of the age and the number of children covered by such expenses.

However, to claim the tax credit for its eligible childcare expenses, a household must, where the expenses have been paid to a person required to provide a Relevé 24,[3] attach a copy of this information slip to the tax return of the individual claiming the tax credit and, in other cases, provide proof of payment of these expenses by producing one or more receipts issued by the recipient of the payment and containing, where such recipient is an individual, his social insurance number.

According to the existing tax regulations, the requirement to file a Relevé 24 with the Minister of Revenue and send a copy to the payers is imposed only on persons, other than natural persons, who supply childcare services in Québec and on individuals who hold a permit issued under the Educational Childcare Act[4] or are home childcare providers recognized by an accredited home childcare coordinating office.

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2 Excluded childcare expenses include the reduced parental contribution set by the government that is paid, among others, to a childcare centre, a day care centre, a home childcare service or, for children of school age, a school daycare centre.

3 This information slip shows the amounts paid on account of childcare expenses, other than excluded childcare expenses, for services provided in a given year.

4 R.S.Q., c. S-4.1.1.

In this regard, section 6 of the Educational Childcare Act stipulates that "no person may, personally or through another, provide or offer to provide childcare to more than six children unless the person holds a childcare centre or day care centre permit or is a home childcare provider recognized by an accredited home childcare coordinating office". However, this prohibition does not apply to persons, organizations or establishments mentioned in the second paragraph of section 2 or in section 153 of such statute.

As a result, an individual who violates section 6 of the Educational Childcare Act is not required to file and send a Relevé 24 regarding amounts paid to him on account of childcare expenses.

Accordingly, to enhance the integrity of the tax system and to improve the coherence of measures the government has put in place to assist parents in receiving childcare services, the tax regulations will be amended to stipulate that the requirement to file and send a Relevé 24 will be broadened to any individual, other than a trust, who provides, during a year, childcare services in Québec generating gross revenues of $30 000 or more.

In addition, the *Sommaire 24* form that must be completed by every person required to file Relevé 24 information slips in relation to childcare expenses will be changed so that the total number of children for whom Relevé 24 information slips have been filed for a year and the cumulative number of days for which expenses have been paid for each of the children for whom childcare is provided can be entered on it.

These changes will apply regarding childcare expenses paid for services provided as of 2011.

3. DETERMINATION OF THE INSURABLE EARNINGS OF FAMILY-TYPE RESOURCES AND CERTAIN INTERMEDIATE RESOURCES FOR THE PURPOSES OF WELFARE PLANS

The public health and social services network has a large number of partners, including family-type resources and intermediate resources. These resources, governed by the Act respecting health services and social services,[5] play an important role in the continuum of services offered by public institutions. They are intended for children, adults and seniors dealing with a variety of difficulties.

In general, family-type resources consist of foster families for young people under age 18 and group homes for adults and seniors. They consist of one or two persons who receive in their principal place of residence a maximum of nine children in difficulty or nine adults or seniors entrusted to them by a public institution to satisfy their needs and offer them living conditions that foster a parental-type relationship in a family context or coming as close as possible to those of a natural environment, as the case may be.

Intermediate resources, for their part, provide persons of any age with a living environment adapted to their needs and deliver the support or assistance services required by their condition. This category includes many types of residential organizations that provide the user with the services required by their condition.

Bill 49 entitled An Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements, and amending various legislative provisions was assented to June 12, 2009.[6]

This statute applies to individuals who are responsible for a family-type resource or an intermediate resource provided, in the latter case, they receive in their principal place of residence a maximum of nine users who have been entrusted to them by one or more public institutions and, in the temporary absence of users, they maintain their principal place of residence for use as a residence for such persons.

According to the Taxation Act, the remuneration granted to individuals who are responsible for such resources is not included in calculating their income[7] and, as a result, does not constitute insurable income for the purposes of the Québec Parental Insurance Plan and the Québec Pension Plan.

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5 R.S.Q., c. S-4.2.

6 S.Q. 2009, c. 24.

7 R.S.Q., c. I-3, par. 489c.2).

Accordingly, so that these individuals can enjoy the coverage stipulated by these plans, various amendments were made to the Act respecting Parental insurance[8] and the Act respecting the Québec Pension Plan[9] by the Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements, and amending various legislative provisions.

On October 26, 2011, the government, by order-in-council, set January 1, 2012 as the date these amendments will come into force.[10] These amendments stipulate in particular the applicable rules for determining the portion of the remuneration of an individual responsible for a family-type resource or a covered intermediate resource that must be used for the purposes of calculating his insurable earnings for the purposes of the Québec Parental Insurance Plan and the Québec Pension Plan.

According to the stipulated rules, the portion of the remuneration of a resource that must be used for the purposes of calculating insurable earnings essentially corresponds to the excess of the remuneration it received over the portion thereof that, under the terms of a group agreement governing the payment of the remuneration or, if there is no such agreement, a ministerial order, is attributable to the reasonable operating expenses brought about in the course of the delivery of services and to the financial compensation paid to, on the one hand, bring the contribution rate applicable to the resource to participate in the Québec Parental Insurance Plan and the Québec Pension Plan to the contribution rate applicable to an employee and, on the other, to enable the resource to enjoy the protection granted by the Act respecting industrial accidents and occupational diseases.[11]

However, it emerged, during the negotiation of the group agreements concerning family-type resources and certain intermediate resources, that it was not appropriate to include, in reasonable operating expenses, the expenses incurred to enable the resources to be assisted or replaced in the course of delivering services, since the decision to make use of a third party belongs to each resource.

However, given that the expenses incurred by a resource to receive assistance or be replaced in the course of its delivery of services must be considered expenses incurred to earn remuneration, the rules applicable to the determination of the portion of the remuneration of an individual responsible for a resource for the purposes of calculating its insurable earnings for the purposes of the Québec Parental Insurance Plan and the Québec Pension Plan will be changed so that in particular the amount determined on that account better reflects its real economic gain.

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8 R.S.Q., c. A-29.0.11.

9 R.S.Q., c. R-9.

10 Order-in-Council 1093-2011.

11 R.S.Q., c. A-3.001.

More specifically, the Act respecting Parental insurance and the Act respecting the Québec Pension Plan will be amended, as of 2012, to stipulate, in the first case, that the qualifying remuneration[12] as family-type resource[13] or as intermediate resource[14] of a person for a year and, in the second case, that the earnings from activities as a family-type resource[15] or as an intermediate resource[16] of a worker for a year correspond to the total of the amounts each of which represents a remuneration for services provided as a person responsible for such a resource for the year.

In this regard, the remuneration of a person or a worker, as the case may be, for services provided as person responsible for a given family-type resource or intermediate resource for a year will be equal to the excess of the aggregate of the amounts each of which corresponds to an amount received by the resource in the year on account of a remuneration mentioned in subparagraphs 1 or 2 of the third paragraph of section 303 of the Act respecting health services and social services over the total of the following amounts:

- the portion of such aggregate that, under the terms of a group agreement governing the payment of the remuneration or, if there is no such agreement, of a decision by the Minister of Health and Social Services taken with the authorization of the Conseil du trésor pursuant to subparagraph 2 of the third paragraph of section 303 of the Act respecting health services and social services, is attributable to the total of the following amounts:
  - the amount of reasonable operating expenses brought about in the course of the delivery of services by the family-type resource or the intermediate resource;
  - the aggregate of the financial compensation mentioned in subparagraphs *b* and *c* of paragraph 4 of section 34 of the Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements;[17]
- the portion of such aggregate that corresponds to the total of the amounts each of which is an eligible expense paid regarding the year to enable the family-type resource or the intermediate resource to receive assistance or be replaced in the course of its delivery of services.

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12 The expression "qualifying remuneration" will replace the expression "net remuneration" to be incorporated into the Act respecting Parental insurance.

13 I.e. a family-type resource to which the Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements (R.S.Q., c. R-24.0.2) applies.

14 I.e. an intermediate resource to which the Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements applies.

15 See note 13.

16 See note 14.

17 I.e. the financial compensation paid, on the one hand, to bring the contribution rate applicable to the resource to participate in the Québec Parental Insurance Plan and the Québec Pension Plan to the contribution rate applicable to an employee and, on the other, enable the resource to enjoy the protection provided by the Act respecting industrial accidents and occupational diseases.

For the purposes of the rules relating to the determination of the remuneration of a person or worker, as the case may be, for services provided as person responsible for a given family-type resource or intermediate resource for a year, an amount shall be considered an eligible expense if it is paid regarding the year by the family-type resource or intermediate resource, as the case may be, to obtain the services of an individual as assistant or replacement and corresponds to:

- either, where the individual is an employee of the resource, the aggregate of the following amounts:
  - the salary paid to the individual for the year;
  - each of the amounts paid, if any, in relation to the salary paid to the individual for the year pursuant to one of the following provisions:
    - section 59 of the Act respecting Parental insurance;
    - section 34 of the Act respecting the Régie de l'assurance maladie du Québec;[18]
    - section 52 of the Act respecting the Québec Pension Plan;
    - section 68 of the Employment Insurance Act;[19]
    - section 315 of the Act respecting industrial accidents and occupational diseases;
    - section 39.0.1 of the Act respecting labour standards;[20]
  - the fees paid for a pay processing service in relation to the salary paid to the individual for the year;
- or, where the individual is not an employee of the resource, the amount paid to a person or a partnership to obtain the services of the individual for the year, including, if applicable, the goods and services tax or the Québec sales tax.

In addition, where a person or a worker, as the case may be, is not the only person responsible for a given family-type resource or intermediate resource for a year, its remuneration for services provided as person responsible for the resource for the year will be equal to the portion of such remuneration otherwise determined represented by its share in the aggregate of the amounts received in the year by the resource on account of a remuneration mentioned in subparagraphs 1 or 2 of the third paragraph of section 303 of the Act respecting health services and social services.

18 R.S.Q., c. R-5.

19 S.C. 1996, c. 23.

20 R.S.Q., c. N-1.1.

Moreover, the required consequential amendments will be made to the Act respecting Parental insurance to reflect the fact that the concept of "qualifying remuneration" announced in this information bulletin will replace the concept of "net remuneration" to be introduced in that statute by the Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements, and amending various legislative provisions.[21]

21 The legislative provisions introducing the concept of "net remuneration" will come into force on January 1, 2012 (Order-in-Council 1093-2011).

4. INTRODUCTION OF A CREDIT FOR TAX PAID TO ANOTHER PROVINCE

Under the current tax legislation, an individual who sojourned in Québec for one or more periods totalling 183 days or more during a year where he ordinarily resided abroad is deemed to have resided in Québec for the entire year. As a resident of Québec, such individual is liable for Québec tax on his world income. However, the tax system stipulates measures to mitigate double taxation of the same income.

For the purposes of the federal tax system, an individual may also be deemed to have resided in Canada throughout a year if, during the year, he sojourned for one or more periods totalling 183 days or more. As a deemed resident of Canada, such individual is liable for federal tax on his world income and, unless he is deemed to reside in Québec, is subject to a surtax that replaces the provincial or territorial income tax.[22]

However, despite the fact that he sojourned in Canada for at least 183 days during a year, an individual is deemed, for the purposes of the federal tax system, not to reside there if, under a tax treaty between Canada and another country, he resides in such country and not in Canada. In that case, the individual is liable for federal tax on his income from a Canadian source, unless all or part of such income is exempt from tax under the tax treaty. In addition, such individual must generally pay to a province other than Québec[23] a tax on the income he earned in such province because of the occupation of an office or employment or through carrying on a business.

However, in the case where an individual who sojourned in Québec for 183 days or more during a year is a resident of a country with which Canada has entered into a tax treaty, the combination of the federal and provincial income tax liability rules may result in such an individual being, regarding income from an office or employment, required to pay, in addition to the federal tax, a provincial tax to the Québec government and to the government of another province.

To mitigate the double taxation to which the income from an office or employment of such an individual may be subject, a non-refundable tax credit will be introduced. Essentially, this tax credit will ensure that the total of the provincial taxes paid regarding an income from an office or employment earned in a province other than Québec does not exceed the greater of the Québec tax or that of such other province that is respectively attributable to such income.

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22 For the purposes of the provincial (other than the Québec) or territorial tax, such individual is not a resident of a province or territory since he is not a *de facto* resident of Canada.

23 In the interests of readability, references to "a province other than Québec" also include a reference to a territory.

More specifically, the tax legislation will be amended to stipulate than an individual may claim this new tax credit, hereafter called "credit for tax paid to another province", for a given taxation year, if he satisfies the following conditions:

— he is deemed to have resided in Québec throughout the year for the reason that he sojourned there for one or more periods totalling 183 days or more in the year where he ordinarily resided outside Canada;

— under a tax treaty between Canada and another country, he resides in such country and not in Canada and, for that reason, is deemed not to reside in Canada for the year for the purposes of the federal tax system.[24]

❑ Determination of the tax credit

An eligible individual for a given taxation year may deduct, in calculating his tax otherwise payable for the year, an amount equal to the aggregate of the amounts each of which is an income tax paid for the year to the government of a province other than Québec that can be reasonably considered as relating to the portion of the eligible individual's income from an office or employment that is included, under the federal tax legislation,[25] in the calculation of his taxable income earned in Canada for the year and that is attributable to the duties he carried out in such province.

However, the amount that may be deducted for the year on account of the credit for tax paid to another province may not exceed the proportion of tax otherwise payable for the year of the eligible individual represented by the ratio between:

— on the one hand, any portion of his income from an office or employment that is included, under the federal tax legislation,[26] in the calculation of his taxable income earned in Canada for the year and that is attributable to the duties he carried out in a province other than Québec, excluding an amount he deducts in calculating his taxable income for the year for the purposes of Québec's tax system on account of amount exempt from income tax in Québec or in Canada because of a provision of a tax agreement entered into with a country other than Canada;[27] and

— on the other, his taxable income for the year.

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24 Income Tax Act (R.S.C., 1985, c. 1, 5th Suppl., par. 250(5)).

25 More specifically, this inclusion is made pursuant to subparagraph 115(1)a)(i) of the Income Tax Act.

26 See the preceding note.

27 Taxation Act (R.S.Q., c. I-3, par. 725a)).

In this regard, the tax otherwise payable for a taxation year by an eligible individual means the tax payable by him for the year calculated without including:

- the tax adjustment relating to certain retroactive payments;
- the dividend tax credit;
- the tax credit in respect of a labour fund;
- the tax credit in respect of the acquisition of shares issued by Capital régional et coopératif Desjardins;
- the tax credit for political contributions;
- the tax credit for new graduates working in the resource regions;
- the tax credit in respect of environmental trusts;
- the deduction for logging tax;
- the foreign tax credit;
- the tax credit relating to a designated trust.

Moreover, for greater clarity, the new credit for tax paid to another province may not be carried over. However, an eligible individual may transfer any unused portion of this tax credit for a year to his spouse.

In addition, the credit for tax paid to another province may be claimed on behalf of an eligible individual in the year of his or her death only in the calculation of the individual's income tax otherwise payable, as established in the principal income tax return filed for that year.

❑ Consequential amendments

■ Alternative minimum tax

Briefly, where the tax otherwise payable by an individual for a taxation year is less than the excess of the minimum tax applicable to the individual for the year over the amount determined for the year on account of foreign tax credit, the tax payable by such individual for the year is equal to such excess.

Given that the purpose of the new credit for tax paid to another province, like the foreign tax credit, is to mitigate double taxation of certain income, the rule of liability to alternative minimum tax will be changed to stipulate that an individual must pay for a year an amount equal to the excess of his minimum tax for the year over the aggregate of the amounts determined on account of foreign tax credit and credit for tax paid to another province if such excess is greater than the individual's tax otherwise payable for such year.

In addition, the rules applicable to the determination of the additional tax for the purposes of the alternative minimum tax carry-over will be changed to stipulate that an individual's additional tax for a taxation year will be equal to the excess of the amount that represents his minimum tax applicable for the year over the amount that would represent his tax otherwise payable for the year, if such tax were determined without including the foreign tax credit, the tax credit for political contributions, the tax credits for the acquisition of shares of a tax-advantaged fund and the credit for tax paid to another province.

- **Foreign tax credit**

To reflect the introduction of the credit for tax paid to another province, the definition of the expression "tax otherwise payable" for the purposes of the foreign tax credit will be changed to stipulate that such tax must be calculated without including this new tax credit.

❑ Application date

These measures will apply as of the 2011 taxation year. They will also apply to any taxation year of an individual for which the Minister of Revenue may, on the date of publication of this information bulletin, determine or determine anew the tax payable by such individual, for such year and make an assessment or a new assessment or establish a supplementary assessment.

5. HARMONIZATION WITH THE FEDERAL LEGISLATION GIVING EFFECT TO CERTAIN PROVISIONS OF THE 2011 BUDGET UPDATED ON JUNE 6, 2011 AND IMPLEMENTING OTHER MEASURES

On December 15, 2011, the Keeping Canada's Economy and Jobs Growing Act received royal assent.[28] This statute, which is designed essentially to implement various measures proposed in the 2011 federal budget updated on June 6, 2011, also implements other measures concerning income tax.

The decisions as to whether or not to harmonize Québec's tax system with the federal tax system have already been made public regarding most of the measures in this statute, in particular in *Information Bulletin 2011-3* of July 6, 2011 and in the additional information accompanying the March 23, 2006 and March 30, 2010 budget speeches. However, the Ministère des Finances du Québec has yet to state its position on some of the new measures stipulated in this statute.

Accordingly, it is appropriate to set out the measures contained in the Keeping Canada's Economy and Jobs Growing Act that will be added to the list of measures already retained.

More specifically, Québec's tax legislation and regulations will be amended to incorporate, with adaptations on the basis of their general principles, the federal measures relating to:

— the tax treatment of the Saskatchewan Pension Plan;[29]

— the terminological change made to paragraph *d* of the definition of the expression "total charitable gifts" in subsection 1 of section 118.1 of the English version of the Income Tax Act[30] bearing on gifts to municipalities,[31] it being understood that the terminological change will also be incorporated in the legislative provision bearing on the deduction for gifts;

— the inclusion of the logging tax credit in the calculation of the alternative minimum tax;[32]

— the rules on the cap applicable to transfers of pension benefits to a registered retirement savings plans where the amount of accumulated benefits has been reduced because of the insolvency of the employer and the under-funding of its registered pension plan,[33] subject to the reserve that the incorporation of this measure be made by reference to the federal tax legislation.

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28 S.C. 2011, c. 24.

29 *Ibid.*, sec. 2, 10(1), 10(2), 11, 12, 16, 17, 23(7), 23(8), 43, 45(7), 45(11), 45(12), 45(13), 46, 47, 49(1), 72(4) and 89.

30 R.S.C., 1985, c. 1, 5th Supp.

31 See above, note 28, sec. 26(1).

32 *Ibid.*, sec. 41(6).

33 *Ibid.*, sec. 45(5) and 97.

More specifically, the changes that will be made to Québec's tax system will apply on the same dates as those for the purposes of the federal measures with which they are harmonized.

Moreover, the measure relating to the possibility of including, in the calculation of adjusted taxable income for the purposes of the alternative minimum tax, the entire amount allowed on account of the deduction for stock options on securities regarding which the tax of Part I.01 of the Income Tax Act[34] applies will not be retained because Québec's tax system is satisfactory in this regard.[35]

34 *Ibid.*, sec. 56.

35 The Taxation Act (R.S.Q., c. I-3) already allows inclusion of the entire amount granted on account of the deduction for stock options on securities in the calculation of adjusted taxable income.